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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Note verbale dated 19 March 1997 from the Permanent Mission of the Union of Myanmar to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights

The Permanent Mission of the Union of Myanmar to the United Nations and other International Organizations in Geneva presents its compliments to the secretariat of the fifty-third session of the Commission on Human Rights and has the honour to enclose herewith a copy of a memorandum* containing observations and comments concerning document E/CN.4/1997/64 pertaining to the Union of Myanmar.

The Permanent Mission would be grateful if the aforementioned document could be circulated as an official document of the fifty-third session of the Commission on Human Rights under agenda item 10.

The Permanent Mission of the Union of Myanmar avails itself of this opportunity to renew to the Secretariat of the fifty-third session of the Commission on Human Rights the assurances of its highest consideration.

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* The annex is reproduced as received in the language of submission only.

ANNEX

Memorandum of Observations and Comments concerning Document E/CN.4/1997/64 pertaining to the Union of Myanmar

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A. INTRODUCTION

The Government of the Union of Myanmar, with the active participation of the people, has been striving within the framework of the following objectives towards achieving a peaceful, prosperous and developed nation.

Political Objectives

- Stability of the State, community peace and tranquility, and prevalence of law and order
- National reconsolidation
- Emergence of a new and enduring State Constitution
- Building of a new, modern and developed nation in accord with the New State Constitution

Economic Objectives

- Development of agriculture as the base and all-round development of other sectors of the economy as well
- Proper evolution of the market-oriented economic system
- Development of the economy, inviting participation in terms of technical know-how and investments from sources inside the country and abroad
- The initiative to shape the national economy must be kept in the hands of the State and the national peoples

Social Objectives

- Uplift of the moral and morality of the entire nation
- Uplift of national prestige and integrity and preservation and safeguarding of the cultural heritage and national character
- Uplift of the dynamism of the patriotic spirit
- Uplift of the health, fitness and education standards of the entire nation

Throughout the period of the past year, positive developments have continued to occur throughout the country in all fields of common endeavour towards building a peaceful, prosperous and developed nation in accordance with the aspirations of the people of Myanmar.

However, the Commission on Human Rights, at its Fifty-second Session, adopted without a vote, a Resolution entitled "Situation of Human Rights in Myanmar"(Document E/CN.4/1996/L.51). Pursuant to the above Resolution, Mr.

Rajsoomer Lallah acting as the Special Rapporteur on the Situation of Human Rights in Myanmar also submitted his report to the Commission, contained in Document

dated February 1997.

The Resolution as well as Mr. Lallah's report, inter alia, contained elements and provisions relating to the following questions:-

The National Convention

The role of the Tatmadaw (Armed Forces)

Administration of Justice

The process of transition to democracy

Situation of human rights in general in Myanmar

Myanmar has rejected all intrusive and negative elements contained in the Resolution. Myanmar has not accepted the appointment of a Special Rapporteur. Nevertheless, as in the case of his predecessor, Mr. Lallah will have the opportunity to visit Myanmar at a mutually convenient date.

However, observations and comments on the report of Mr. Lallah, together with the progress achieved in the Union of Myanmar in the political, economic and social fields, are furnished on the pages following for the ready reference of delegations of member States of the Commission on Human Rights and observer delegations in order to enable them to understand the ongoing progress occurring in the Union of Myanmar.

It is not only on the domestic front that progress has been made but Myanmar has also participated actively in the affairs of the region in the past year, thus contributing to the maintenance of peace and stability of the region as well as to its continuing prosperity.

B. THE NATIONAL CONVENTION

Since the assumption of State responsibilities, the State Law and Order Restoration Council, in keeping with its declared commitment, has taken concrete and systematic steps to build a genuine multi-party democratic state in accordance with the aspirations of the people of Myanmar. In this process, and considering past painful and costly experience, a strong and enduring State Constitution is an essential prerequisite; at the same time it is also the expressed wish of the great majority of the political parties that are legally existing in the Union of Myanmar.

It is in fulfilment of this requirement, and in response to the aspirations of the people of Myanmar, that a National Convention has been convened. Six months prior to the commencement of the first session of the Convention, the Steering Committee met with the representatives of the existing political parties, including the National League for Democracy (NLD).

From the suggestions and proposals, which were given in a free and open manner by the participants, the types of delegates who were to be invited to the National Convention were agreed upon as follows:-

(1) Representatives from political parties

(2) Representatives elect

(3) Representatives of national racial groups

(4) Representatives of peasants

(5) Representatives of workers

(6) Representatives of intelligentsia and technocrats

(7) Representatives of State Service Personnel

(8) Other invited personages

Selection of Representatives from Political Parties

The representatives of the political parties were nominated by their own parties, according to the rules and procedures of the respective parties.

Selection of Representatives of National Races, Peasants and Workers

In nominating delegates to represent the national races, peasants and workers, Selection Committees comprising 15 members each for the State/Division, District and Township levels were formed. Each Committee was chaired by a General Administrative Officer, while personnel from Administrative Departments who possess detailed knowledge of national racial groups, peasants and workers, together with local personages who have earned respect and trust of the populace, made up the members.

Selection of Representatives of Intelligentsia and Technocrats

Selection Committees comprised of senior administrative officials, academicians, and intellectuals nominated delegates to represent the intelligentsia and technocrats.

Selection of Representatives of the State Service Personnel

Selection Bodies formed at the various Government Ministries and Departments nominated delegates to represent the State Service (Government Service) Personnel.

Selection of Other Invited Personages

Persons well-known for their political, economic, social and administrative experiences, as well as representatives from armed groups who had returned to the legal fold and joined the Government and the people in the development of their respective regions were selected for this group of delegates.

Working Procedures

The National Convention Convening Commission drew up the working procedures which were then published accordingly. The objective and nature of the working procedures is to facilitate the delegates in holding discussions systematically and freely. Therein are prescribed methods to be followed, such as:-

- Members of each group can freely elect five members of the Panel of Chairmen to lead and supervise the deliberations of the group.
- The Panel of Chairmen and members of each group are at liberty to schedule and hold discussions freely until matters are resolved, without any limitation of time.
- Each group is at liberty to freely write and present the proposal paper of their group.

The National Convention is an all encompassing representative body, comprising nearly 700 representatives from the whole spectrum of the people of Myanmar. The delegate groups enjoy ample opportunity to put forth their opinions openly, and the discussions held so far have shown that all the groups were able to present and record their views freely.

Through the process of free and open deliberations and mutual accommodation, the following have been achieved at the National Convention up to the time of completion of the latest session:-

- 15 Chapter Headings for inclusion within the State Constitution.
- Agreement on 104 Fundamental Principles which will form the basis for drafting of the new State Constitution.
- Detailed basic principles on three chapter headings – the State, the State Structure, and Head of State.
- The delineation of the Legislative, Executive and Judiciary organs.

The work of the National Convention has reached the halfway point. The delegates have reached a consensus that the new State Constitution should be a Presidential type of constitution with a National Assembly at the Centre and that there will be a bicameral legislature. At the same time, States and Divisions will have their own legislatures.

The delegates of the National Convention, the members of the National Convention Convening Committee and the National Convention Work Committee are now studying the basic principles, regarding the powers to be distributed to the Legislative, Administrative, and Judicial branches. When the National Convention resumes again, focus will be on the distribution of State Powers.

In future sessions of the National Convention, the Delegates will be discussing further the detailed basic principles for each of the remaining Chapter Headings, that is, the Tatmadaw, Citizens and Their Fundamental Rights and

Responsibilities, Election, Political Parties, Emergency Provisions, Constitutional Amendments, State Flag, State Emblem, National Anthem and Capital, Transitory Provisions, and General Provisions.

Necessary documents pertaining to each of the Chapter Headings are always made available to delegates at the appropriate time. For example, when "Citizens and Their Fundamental Rights and Responsibilities" are discussed, all relevant domestic and international laws, norms and standards, including the Charter of the United Nations and Universal Declaration of Human Rights, will be taken into consideration.

Actions of the delegates of the National League for Democracy Party (NLD)
at the Previous Session of the National Convention

Prior to the convening of the National Convention, and during the course of discussions at the coordination meetings held from 23 June to 10 July 1992 for the Convening of the National Convention, the leader of the representatives from the NLD spoke at length, expressing support for inviting delegates belonging to the eight categories. From the beginning of the National Convention, the delegates from the NLD had been working in unity with the other delegates. They participated in the deliberations of the Convention, expressed their views freely, and put up numerous proposal papers.

Among the proposal papers put up by the NLD, there were those that showed support for the fundamental principles, while some suggested additions to other proposals. In cases where proposals could not be agreed upon, it was mentioned as such and duly recorded.

As in the previous meetings of the National Convention, 86 delegates from the NLD, attended the Plenary Session held on 28 November 1995, together with other delegates. On the previous day, the NLD had sent a letter containing criticism regarding the National Convention, to the Chairman of the National Convention Convening Work Committee.

On 28 November 1995, in another letter to the Chairman of the National Convention Convening Commission, the NLD intimated that its delegates would no longer continue to attend the National Convention. The main reason given was that the matter of dialogue wanted by them was not included in the opening address of the Chairman of the National Convention Convening Commission.

Thereafter, the 86 NLD delegation without obtaining prior permission from the Panel of Chairmen, as required by the Convention procedures, did not attend the meetings of the Plenary Session on 29 and 30 November 1995. Consequently, upon presentation by the Panel of Chairmen and as provided for in paragraphs 48 and 49 of the National Convention Procedures, the Work Committee revoked the privilege of the 86 delegates who went absent without leave, of being National Convention delegates.

The actions of the NLD can only be interpreted as those that aimed to:-

- Cancel the basic principles laid down by the National Convention because these are not in conformity with the opinion of the NLD;
- Reorganize the National Convention with delegates of their own choosing in order to lay down basic principles to meet with the policies of the NLD;
- Lay down new methods and procedures to be followed according to the wishes of the NLD;
- Move towards dialogue so as to be able to carry out the motives mentioned above;

The moves made by the NLD were aimed at disrupting the National Convention in order to replace it with another convention where the NLD would be able to dominate and give priority to the promotion of their party interests instead of considering the interest of the whole nation.

The successful completion of the National Convention is regarded as a national priority. The National Convention is an essential prerequisite for the building of a democratic society in Myanmar. It is being convened so that representatives from all strata of society can express their views and aspirations while obtaining, by consensus, fundamental principles that will serve as the basis for drawing up a new and enduring democratic State Constitution. It is a political platform open to representatives of all the people of Myanmar.

The matter of a single political party desiring to hold dialogue with the Government is not the concern of the National Convention. It does not come within the purview of the task concerning the convening of the National Convention.

The National Convention Convening Commission is of the view that just because one group rejects the programmes for building a peaceful and prosperous state and establishing a genuine multi-party democratic system, there is no reason for it to abandon its national duties.

The National Convention will continue its work with the participation of the overwhelming majority of delegates, including delegates from the various national races, who honestly and sincerely have the interests of the people and the State at heart.

C. THE ROLE OF THE TATMADAW

One of the objectives laid down to serve as a guide during the deliberations at the National Convention is for the Tatmadaw (Myanmar Armed Forces) to be able to participate in the national political leadership role of the future state.

This role envisaged for the Tatmadaw is a role in keeping with Myanmar's historical traditions. As stated by the Foreign Minister of the Union of Myanmar in his statement to the General Assembly at its 48th Session, "The history of Myanmar is synonymous with the history of the Tatmadaw. Since the time of our struggle for national independence it has

been in the forefront of national politics ... The Tatmadaw does not covet power. Nor does it have any desire to hold on to the reins of power. It is above party politics. However, as it represents the single disciplined organization in the nation, it is incumbent upon it to play a leading role in national politics, safeguarding the nation, the national unity and national sovereignty."

The Tatmadaw represents the national defence force born out of our struggle for independence more than fifty years ago. Composed of various indigenous national races, the Tatmadaw is a positive and dynamic force, made up of none other than the sons and daughters of the citizens of Myanmar, dedicated to the defence and welfare of the State and the entire population.

The Tatmadaw follows the tradition of serving the people's interest loyally and faithfully. It has served to protect the nation and the people in times of national crisis in the period following independence. In 1948-49, when insurgency was at its highest, it was able to successfully safeguard the nation's existence. In 1958, when splits within the political party in power brought about renewed threats of bloodshed, the Caretaker Government formed by the Tatmadaw returned the country to conditions of stability and tranquility. Again in 1962, when the country faced disintegration due to machinations of some groups who fell under the influence of foreign elements, the Tatmadaw was able to reverse the deteriorating conditions. In 1988, the Tatmadaw was again compelled to assume the responsibilities of the State as the whole administration collapsed and the country faced the threat of total disintegration. The disturbances which took place in 1988 posed the greatest threat of disintegration of the Union. After the assumption of State responsibilities, the Tatmadaw is now endeavouring, together with the people, to build a peaceful, prosperous and modern nation according to the aspirations of the people.

All members of the Tatmadaw are volunteers who join the Armed Forces of their own free will, motivated by their sense of patriotism. Since its inception, the Tatmadaw is not a mercenary army.

This highly disciplined self-defence force imbued with a sense of patriotism has its own code of conduct besides the Defence Services Rules and Regulations, which every member is required to observe scrupulously. They are also required to understand and observe civil and criminal legal procedures. Punishment in accordance with these rules is meted out to those found guilty of any transgression. The members of the Tatmadaw cannot break the law with impunity. In fact, they pay more heed to the Law as they can be punished by both the military and civil courts.

The officers and rank and file of the Tatmadaw are recruited and trained systematically by motivated instructors in highly professional military institutions. Courses on humanitarian law form part of the curricula at the Officers' Training Institutes. With the co-operation of the International Committee of the Red Cross, training programmes concerning the Four Geneva Conventions of 1949 have been conducted in Myanmar for officers ranging from Tactical Operational Commanders to lower echelons. Again, under the auspices of the ICRC, officers have been sent to Geneva and other places for further training courses.

The Tatmadaw possesses unique qualities and noble traditions. These qualities have made it possible for the Tatmadaw to shoulder successfully the national responsibilities whenever Myanmar's national sovereignty and independence were threatened on four separate occasions in the past. Also at present, because of such qualities as patriotism, discipline, loyalty, unity, efficiency, perseverance, tenacity and sacrifice, the Tatmadaw continues to obtain unprecedented achievements in the building of the nation.

As the Tatmadaw represents the single disciplined and most cohesive organization in the country, and it has always shouldered its primary responsibility of defending the nation, ensuring the non-disintegration of the Union, the non-disintegration of national solidarity, and the perpetuation of national sovereignty, it is only logical that the Tatmadaw should play a corresponding role in the transition that the country is undergoing from one political, economic and social system to another, as well as in the future of the State.

D. ADMINISTRATION OF JUSTICE

The State Law and Order Restoration Council laid down the three Main National Causes on the assumption of State Power in 1988:-

1. The non-disintegration of the Union
2. The non-disintegration of National Solidarity
3. Ensuring the perpetuity of National Sovereignty

The State Law and Order Restoration Council is resolute in seeing to it that there be no repetition of the total anarchic situation which the country witnessed in late 1988. It resolutely holds the view that taking into consideration the objective realities prevailing in the country, measures towards the adoption of a truly democratic state should be taken methodically and systematically, one step at a time. It is of the view that the exigencies of the current situation in the Union demands that the prevailing laws of the land be upheld and be enforced in order to preserve and strengthen the rule of law, and for the maintenance of public order, which in turn will protect the supreme national interest, proclaimed in the Three Main National Causes.

The State Law and Order Restoration Council inherited more than 900 main laws when it assumed responsibility of the State. Among these are ones enacted by former colonial rulers, and by successive Governments of the Union of Myanmar. These Governments have enacted and used the laws to maintain peace and stability within the country, as well as for the fair and efficient governance of the country. Myanmar managed to maintain the rule of law and stability in the country throughout its long history and because of this, has never posed a threat of any kind to regional peace and stability. Myanmar has always had a sound, efficient and fair judicial system.

The present Government of the Union of Myanmar continues to keep in force those laws such as the 1923 Official Secrets Act, the 1950 Emergency Provisions Act, the 1908 Unlawful Associations Act, the 1962 Printer and Publisher's

Regulations Law, the 1975 Law Safeguarding the State Against the Dangers of Subversive Elements, and the Penal Code, enacted and used by successive Governments, which are found to be necessary for the maintenance of law and order in the country.

The Emergency Provisions Act came into being in 1950 due to the armed insurgencies that arose beginning from 1949. The then Government enacted the law in order to be able to effectively counter the armed insurgencies and to be able to maintain national law and order.

Even though 15 major armed groups have returned to the legal fold and have relinquished the idea of armed struggle, the KNU continues to wage atrocities against the Government and the people as reported in Chapter C of this document. This underlines the necessity of keeping the 1950 emergency Provisions Act in force in order to protect peace and tranquillity for the people in the country.

Since many nations have such laws in order to protect law and order and to counter armed insurrections, it cannot be said that by keeping on the 1950 Emergency Provisions Act, Myanmar is violating human rights. Neither does the Government make use of it lightly without careful consideration.

The Official Secrets Act was enacted in 1923, long before Myanmar regained her independence, in order to protect the safety and interests of the nation from persons involved in acts such as espionage, communicating with agents of foreign countries, divulging classified information, obstructing the duties of the security forces, unauthorised use of security forces' uniforms, impersonations and harbouring spies.

Successive Governments upheld this Act without any amendment or addition to the original which was brought into force from the time Myanmar was regarded as a province of British India during colonial times. It is not an act conceived by the present Government nor by any of the post-independence Governments. Neither was it brought about to target any one individual or organisation. All nations have their own versions of an official secrets act, enacted according to their own particular situations. Having and enforcing such an Act does not amount to a violation of human rights in Myanmar or in any other country.

The Unlawful Associations Act was enacted in 1908 by the colonial Government in order to be able to effectively prevent persons from contacting and providing aid to armed insurgent groups, with a view of promoting internal peace, law and order. It has only been continued to be applied by successive post-independence Governments of Myanmar, and not enacted just in 1957 as Mr. Lallah's report erroneously claims.

After Myanmar regained her independence, there arose a variety of armed insurgent groups. Consequently the Government at that time had to apply the Unlawful Associations Act to pronounce these groups unlawful. Among those unlawful groups were, Red Flag Communist Party (Burma), Red Flag Peasants' Union, Karen National Defence Organisation (KNDO), Burma Communist Party, Peoples Comrade Party (PCP), and Karen National Union (KNU).

Any infringement of a law in force in the country would result in legal action being taken against an individual or individuals. Such preventive measures are not tantamount to a violation of human rights.

The Law Safeguarding the State Against the Dangers of Subversive Elements was enacted in 1975 by the Pyithu Hluttaw (People's Assembly) to protect and safeguard national sovereignty, national security, and the peace and tranquillity of citizens. It was not enacted by the present government.

According to this law, if there are reasons to believe that any citizen has committed, or is committing, or is about to commit any act which infringes upon the sovereignty and security of the State, or public peace and tranquillity, the Council of Ministers may pass an order as may be necessary restricting any fundamental right of such a person.

This law is a preventative measure than a law aimed at penalising any individual.

The Penal Code was enacted in 1861 by the colonial Government to take action against unlawful acts both within and without the country. Successive Governments have continued to enforce it even after Myanmar regained her independence.

Even though this law has been in force for over 136 years, it has continuing relevance. All civilized States have similar codes that seek to uphold the rule of law.

Since not all of the existing laws in the Union of Myanmar are compatible with the current political, economic and social systems, a nine-member Central Law Security Board chaired by the Attorney General was formed in 1991, in order to scrutinize these laws, and to make recommendations regarding those laws which should be repealed, those which should be amended, and those which should be substituted with new ones.

On recommendation of the Central Law Scrutiny Board, the State Law and Order Restoration Council has, of last year repealed over 150 laws which were found not to be in conformity with the present situation. Many new laws have been enacted. The Central Law Scrutiny Board is still involved in the process of scrutinizing laws presented to the Board by the various ministries.

Mr. Lallah in his report has mentioned the Orders and Proclamations of the State Law and Order Restoration Council. These Orders are issued to facilitate the governing of the Nation, and not for the suppression of human rights in the country.

The State Law and Order Restoration Council issued Order No. 2/88 in the aftermath of a state of near-anarchy in the country, with the intention of halting the deteriorating situation present in the whole country from all sides. It was issued in order to facilitate the prevalence of law and order, peace and tranquillity, smooth and secure travel and transportation, and amelioration of the livelihood of the people.

This order addresses only the situation of 5 or more people congregating on the streets in order to march, protest, agitate, incite, hold meetings, and in general causing unrest among the public or to commit unlawful acts. It is in order to prevent such acts from happening. The order does not concern the normal congregation of people, but only those that have the express purpose of instigation of people or perpetration of illegal offences.

As the situation in the country improved after 1988, the part of the Order concerning a curfew was revoked by Order No. 10/92.

In Myanmar, there exists many different religions such as Buddhism, Christianity, Islam and Hinduism. There is complete freedom of religion.

There are nine recognised major sects in Buddhism. Over 1200 representative sangha of these nine sects in Myanmar convened in 1980 to establish the rules and regulations to be followed by the sangha in order to perpetuate Buddhism and uphold the purity of the religion. The guidelines also called for the systematic formation of sangha organisations at different levels throughout the country.

However, in 1988, various new Sangha organisations emerged and became active in non-religious activities such as politics, threatening senior members of the Order, and disruption of the existing recognised religious organisations. In order for the stability and upkeep of purity in religion, and with a view of maintaining law and order, Order 6/90 was issued, banning Sangha organisations outside of the nine recognised sects and prohibiting political parties from exploiting religion. The order cannot be construed as tantamount to religious persecution or violation of the right of freedom of association.

Prior to 1988, when Myanmar was under a one-party system, state employees could become members of the Burma Socialist Programme Party. Many of them did. Even before the State Law and Order Restoration Council took over State responsibilities, the ruling State Council of that time issued Order 14/88 on 16-9-88 to the effect that in preparation for moving towards a multi-party system, all State employees should carry out their duties with allegiance only to the country

and not to any political party. Consequently, all State employees ceased to be members of the Burma Socialist Programme Party.

In the existing Government Servants Conduct Rules, established in 1938, it is provided that State employees:-

(1) should not engage in any party politics. Moreover, they should not give financial assistance or assistance in any manner to political parties.

(2) should not participate in any political organisation.

(3) shall also prevent their dependents and those under their guardianship and protection from participating either directly or indirectly in all activities which are against the State Government.

(4) shall not participate in an association, organisation, union etc., relating to service personnel which are found not in accordance with the conditions prescribed from time to time by the State Government.

Order 1/91 issued by the State Law and Order Restoration Council has only revived an existing set of rules, to be in keeping with the political path chosen by the present Government and the people. It does not aim to undermine the right to freedom of association.

According to Order 1/90, since the State Law and Order Restoration Council is a military government, it is a government exercising Martial Law. It has also undertaken the legislative, administrative, and judiciary powers. The elected representatives are individuals with the duty of drawing up a State Constitution for a future democratic state. Until the emergence of a new government based on the new State Constitution according to the wishes of the people, the State Law and Order Restoration Council will not tolerate the writing of a temporary Constitution that is aimed at seeking to take over the State Power.

The Order has ruled that the elected representatives are individuals entrusted with the task of developing the new State Constitution. It does not imply that only the elected representatives are to develop the constitution to the exclusion of others. The Order provides for the systematic transfer of power to a new government, and does not seek to hinder the democratisation process.

Since former State Organs including the Council of People's Justices and the Council of People's Attorneys have been abolished, following the assumption of the State Power by the State Law and Order Restoration Council, a new Judiciary Law regarding administration of justice was enacted by Law No.2/88 on 26 September 1988. Law No.3/88 regarding the appointment of an Attorney General, his competence and responsibilities was also promulgated on the same day.

A supreme court and other civil courts at State/Division and Township levels were established in accordance with Law No.2/88.

Judicial Principles upon which the administration of justice shall be based are provided in Chapter II of the Judiciary Law as follows:-

a) to administer justice independently according to law

b) to protect and safeguard the interests of the people and to aid in the restoration of law and order and peace and tranquillity

c) to educate the people to understand and abide by the law and cultivate in the people the habit of abiding by the law

d) to work within the framework of law for the settlement of cases

e) to dispense justice in open courts unless otherwise prohibited by law

f) to guarantee in all cases the right of defence and the right to appeal under law

g) to aim at reforming moral character in meting out punishment to offenders.

The present system of administration of justice is aimed at the flourishing of justice and equality, protecting public welfare, rule of law, and prevalence of regional peace and tranquillity. It also aims at winning the trust and reliance of the public in the courts.

The Code of Criminal Procedure and other subsequent relevant Laws provide comprehensive legal framework and guarantees to ensure that a fair trial be given to every defendant at a law court. There are also legal safeguards against the abuses of legal proceedings during trial.

The conduct of trials and the administration of justice are carried out in public courts in strict observance of the above-mentioned seven principles and the provisions of the Code of Criminal Procedure, that the independence of the Judiciary is well maintained, and that there is no control or influence exercised by the Government over the administration of justice by the Judiciary.

Arrest and Detention

In the Union of Myanmar, arrest or detention of a person cannot be carried out without a valid reason. Arrest or detention is made in accordance with the provision contained in the Code of Criminal Procedure. The following provisions are enacted to protect a person from arrest and detention without valid reasons:-

- According to Section 54(1) of the Code of Criminal Procedure a person can be arrested without a warrant of the magistrate. However, in doing so, there must be valid reasons or grounds for arresting that person. Under this section, a police officer may arrest a person without an order from the magistrate, when a reasonable complaint or credible information has been received indicating that the person concerned is connected with a cognizable offence. That person concerned can also be arrested if the reasonable suspicion exists against the person.

- In addition, if a complaint is lodged against a person at a police station and if the alleged offence is within the police jurisdiction the police officer concerned has to book the complaint under Section 154 of the Criminal Code. If the police officer-in-charge of the police station decides to carry out any investigation under Section 156 and 157(1) of the Penal Code an arrest can be made against that person without a warrant. The officer-in-charge can delegate this authority to a subordinate police officer.
- According to Section 220 of the Penal Code, if a person who is entrusted with the authority to detain persons and exercises this authority with the knowledge that what he is doing is wilful and is unlawful or that he is acting with malice, he is liable to seven years' imprisonment or fine or both. This section is to prevent the detention of a person without credible evidence.
- No police officer has the authority to detain a person for more than 24 hours. This provision is contained in Section 61 of the said Code.
- According to Section 167(1) of the Code of Criminal Procedure, a remand is necessary from a judge to detain a person for more than 24 hours. In obtaining this remand the accused person has to appear before the judge. The detainee can plead before the judge that he should be set free for lack of evidence or valid reason.

Right of accused while in custody

During the investigation by the police the arrested and detained person has the right to engage a lawyer, if he so desires. Under paragraph 1198 (3) of Myanmar Police Manual the arrested and detained person may, while in police custody, meet and seek advice from his lawyer or his relatives and friends. He may be provided with food of his liking by his relatives and friends.

Under Section 496 of the Code of Criminal Procedure, he has the right to apply for grant of bail to the police officer either through his lawyer or by himself during the investigation by the police. If the offence alleged against him is a bailable one according to the second schedule of the said Code and he shall, as of right, be released on bail. Even in non-bailable cases mentioned in the above schedule the arrested and detained person has the right to apply freely for bail to the Magistrate concerned during the police investigation and the Court may grant him bail according to the merits of the case. Even in cases where a person is accused of an offence punishable with death or transportation for life the Court may grant bail to him if there is no ground to believe that he is guilty of such an offence.

If there is no case against the arrested and detained person he shall be released. If a case is made against him he is sent up for trial to the Court concerned.

Protection for persons under detention

The following provisions are intended to protect a person under detention from torture and inhuman treatment.

- Section 330 of the Penal Code reads as follows:-

> Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to cause the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

- Similarly, Section 24 of the Evidence Act runs as follows:-

> A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise.

- Section 43 (f) of the Police Act states, inter alia, any police officer who shall offer any unwarrantable personal violence to any person in his custody shall be punishable with imprisonment for a term which may extend to three months, or with fine not exceeding three months' pay, or with both.

- And also para 1380 of the Police Manual states -

> Section 43 of the Police Act provide that any police officer who shall offer unwarrantable personal violence to any person in his custody shall be liable, on conviction before a magistrate to three months' imprisonment, or to a fine, or to both, or alternatively to prosecution under the Penal Code. Apart from his criminal liability, the maltreatment of defenseless prisoners is a dishonourable act which cannot in any way be extenuated and will ordinarily be punished with dismissal, whatever the rank or antecedents of the culprit. Police officers of all ranks will exert themselves to prevent the good name of the force being sullied by the taintest show of harshness or violence in the treatment of persons in custody.

Conduct of a fair trial

- Section 252 of the Code of Criminal Procedure provides:-

"When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution and the accused shall have the right to cross examine the complainant (if any) and the witness produced in support of the prosecution."

- Section 253 provides:-

"If, upon taking all the evidence referred to in Section 252, the Magistrate finds that no case against the accused has been made out which would warrant his conviction, he shall discharge the accused."

- Section 254 and 255 provide:-

"If, when such evidence has been taken, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence ... the Magistrate shall frame in writing a charge against the accused. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make. If the accused pleads guilty, the Magistrate shall record the plea and convict the accused thereon."

- If the accused refuses to plead guilty, the accused still has the right to request that the witnesses for the prosecution whose evidence has been taken, be recalled before the court, and be cross-examined and re-examined by him or his defence counsel under Section 256 and Section 342. After the accused and the witnesses named by the accused have been re-examined, if the Magistrate finds the accused not to be guilty, he will record an order of acquittal under Section 258 (1). If the Magistrate finds the accused guilty, he will convict and pass judgement on the accused.

Civil Courts

The Courts in Myanmar are constituted under the Judiciary Law of 1988, in the following order:-

a) The Supreme Court,

b) State or Divisional Court,

c) District Court,

d) Township Court.

An appeal or revision from any judgement or order of the Township Court lies to the State or Divisional Court, or the District Court; an appeal or revision from the judgement or order of the State or Divisional Court lies to the Supreme Court.

The Supreme Court is empowered not only to hear appeals and revision cases. It is also empowered to examine an order or decision that is not in accordance with law relating to the legal rights of the citizens. It is also empowered to hear and decide maritime cases. The judges are appointed by the Supreme Court. It has administrative control and general superintendence over all courts formed by it.

Administrative Court Procedure

There are administrative courts in Myanmar where rights of the workers are determined such as the Trade Disputes Act and the Workmen's Compensation Act.

The Trade Disputes Act deals with dispute or differences between employers and employees, employers and workmen, which is connected with the employment or non-employment or the term of employment. "Workmen" means persons who earn their livelihood by their labour or otherwise. Employee" means a person who is responsible for the workmen's wages.

Under the Trade Dispute Act the Government may constitute a Central Labour Committee. The Central Labour Committee may appoint as many labour sub-committees to the Central Labour Committee whose decisions shall not be called into question by any Civil or Criminal Court nor the Supreme Court.

Any workman who receives any personal injury by accident arising out of and in the course of his employment, his employer is liable under Workmen's Compensation Act to pay compensation in accordance with the schedule provided in the Act. The expression "workmen"conveys the same meaning as is mentioned above. The amount of compensation depends upon the duration of service and the amount of his wages. The degree of injury is determined by a doctor appointed by the State. The word "injury" includes death.

Any dispute as to the amount or right to receive compensation is decided by a committee known as the Workmen's Compensation Committee composed of three members. The venue of the Committee is the local area where the accident took place or where the parties agree or as decided by the Government. The Committee hears both parties and gives its decision.

The decision of the Committee may be appealed against to the Supreme Court on a question of law or on facts where the quantum of compensation exceeds Kyats three hundred. The decision of the Supreme Court is final.

Military Court Procedure

Offences committed by military personnel are tried under the Defence Services Act. Unlike the present set up in the ordinary criminal courts, courts under the Defence Services Act are constituted by benches consisting of not less than five officers in the case of a general court-martial, not less than three in the case of a district court-martial, not less than three also in the case of a summary general court-martial and one in the case of a summary court-martial. In the case of the summary court-martial, two other officers attend to watch the proceedings. Unlike criminal courts such courts are constituted as and when required and dissolved when not required. In all the proceedings under the general courts-martial it is compulsory for a judge advocate or a person nominated by the Judge Advocate-General to attend. The accused is entitled to a counsel as in ordinary criminal courts. The place of trial may be anywhere irrespective of the place where the offence is committed.

The members of the courts-martial except that of summary courts-martial are subject to challenge by the accused. A court-martial may take judicial notice of any matter within the general military knowledge of the members.

In a trial for desertion or absence without leave the accused may refer to an officer in the service of the State in support of his case. In such an event the court shall adjourn the case and await for the reply from the aforesaid officer without the appearance of such officer as a witness before the court.

All the Judges of the courts-martial except that of the summary court-martial are subject to confirmation by the higher authorities. The principle of *autre fois* acquit applies relating to a decision of such courts under the Defence Services Act. But the ordinary criminal courts may try again for the same offence or on the same factor with the previous sanction of the Head of the State.

Unlike the Criminal Procedure Code, under the Defence Services Act, the law of limitation applies to certain offences. For example, in case of desertion and fraudulent enrolments the period of limitation for prosecution is three years from the date of the offence.

When a criminal court and a court-martial have each jurisdiction in respect of an offence committed by a military personnel, it shall be the discretion of an officer empowered to convene a court-martial as to the court in which trial would take place. If the criminal court is of the opinion that such an offence should be tried by it, it shall call for delivery of the accused for trial in the criminal court or request to keep the proceedings pending till a reference is made to the Head of the Stated. The decision of the Head of the State in this respect is final.

An appeal lies to a court-martial appeal court consisting of such of the judges of the Supreme Court as may be nominated by the Chief Justice of Myanmar. A further appeal lies to the Supreme Court subject to a grant of a certification to the accused by the Attorney-General as to its fitness for appeal.

A military personnel whilst not in active service or not inside Myanmar or not at a frontier post commits an offence of murder, culpable homicide not amounting to murder or rape shall not be tried by a court-martial. If he commits a civil offence, otherwise than under the circumstances mentioned above, he would be punished in accordance with punishment mentioned in the relevant provisions of any law in force.

E. TRADITIONAL CONTRIBUTION OF LABOUR

Myanmar has been subjected to criticisms from some quarters for what is termed "forced labour". In Myanmar voluntary labour and contributed labour are essentially similar. Underlying the controversy is the fact that when citizens are upon occasion requested to donate their labour, it is only for the development of their own communities, with the long-term goal of facilitating transport, improving agriculture, and generally developing the areas in which they reside. In many countries, community projects where residents provide labour remain a proud tradition. There can also be found traditions of national service and those who do not wish to do military duties are required to give their time for service in other fields.

National Service is written into the law in those countries and people offer their services willingly, seeing it as their duty. There are also others who dissent and have a desire to change the law.

There is no doubt that Myanmar is still an underdeveloped country. The people in rural and border areas are still poor, as contrasted with inhabitants of developed countries. But at the same time, this level of poverty is not unusual for an underdeveloped country. The Government of Myanmar wishes only to help bring the poor people out of their continuing cycle of poverty and to make their lives better. A review of many of the projects where Myanmar has been falsely accused of using so-called "forced labour" will reveal that there will be long-term economic benefits for the people living in those regions where the projects take place. In other words, the Government and the inhabitants of disadvantaged areas believe that the lack of infrastructure is one of the main reasons for economic and social backwardness. It cannot be stressed enough that having infrastructure in place will benefit the common people of the region concerned and act as a springboard for further economic and social development.

Without major international aid, the Government of the Union of Myanmar can do little to bring development to those areas in most need, and it has to utilize the resources available to them. Hence for the people of less developed areas are requested to cooperate toward endeavours designed to make life better for themselves and for future generations to come.

In the context of contributed labour, Myanmar traditions also need to be taken into account. There have always been a tradition, which dates back centuries, of labour contributed towards village improvement, building of roads, bridges, schools, monasteries, pagodas as well as in the digging and clearing of lakes, ponds, wells, and irrigation systems. This tradition persists to this day, leading to both mental and physical well-being. For this reason, those who can afford to have always donated money while those that cannot donate their labour.

For their contribution towards community development, remuneration is given to the people who contribute labour, by the government on a piece-rate basis, or at prevailing wage rates. In some cases, the authorities disburse a lump sum of money for the benefit of the whole community. The basic needs of the workers, such as medical care, are also provided by the departments concerned.

The armed forces personnel, when not engaged in security duties, have always joined in with the local people to complete development projects that are being conducted in their respective areas. Since all the armed groups with the exception of one have now returned to the legal fold, and peace has returned to the areas once inhabited by these armed groups, Tatmadaw personnel need not be deployed permanently in these areas any more. A large number of Tatmadawmen are now taking full responsibility for the construction of new motor roads and railroads in Mandalay, Magway and Tanintharyi Divisions.

To create more job opportunities for the local people, the Government has additionally invited construction tenders from local private entrepreneurs to undertake excavation works for some railway lines and to construct major highways. Private companies who win these competitive tenders are working within the bounds of the market economy and are paying the workers competitively, hence the local populace are no longer engaging in these projects.

Prisoners who have been sentenced by courts of law to include compulsory labour are sometimes allocated to carry out their sentences at some of the infrastructure development projects. Such sentences are part of the rehabilitation process and prisoners enjoy reduction of sentences through contribution of labour. 23 000 prisoners who had diligently contributed their labour at the various regional development work camps have had their sentences reduced by one third under Section 401 (1) of the Penal Code by the Ministry of Home Affairs Order issued on 25 March 1995. Many prisoners whose reduced terms have come to an end have already been released.

The members of the Armed Forces have sometimes had to employ civilian labourers (porters) for transportation of supplies and equipment over difficult terrain in remote areas when launching military operations against armed groups. The law provides for the hiring of civilian labourers to assist the members of the Armed Forces who are on active duty.

Recruitment of civilian labourers are done after consultation with the local authorities and is based on the following three criteria:-

a) They must be unemployed.

b) They must be physically fit to work as porters.

c) A reasonable amount of wages must be fixed and agreed upon before recruiting.

The civilian labourers recruited are never required to accompany the troops to the actual scene of battle, neither are they exposed to danger. The respective military unit has the responsibility of providing wages, transport charges, accommodation, messing and medical cover for the hired labourers. There also exist volunteer porters and professional porters who earn their living by offering to work.

F. HUMAN RIGHTS IN MYANMAR

Myanmar is well-known for its unique culture. Tolerance, compassion and gentleness are the hall-marks of its unique culture. Discrimination on ground of race, religion and gender are non-existent in the Union of Myanmar throughout its long history.

As the Myanmar people are a religiously devout people, the universal sentiments of *metta* (love and goodwill), *karuna* (compassion) and *mudita* (sympathetic joy) prevail countrywide. Because of the long and distinguished historical and cultural heritage, traditions and religious devotion, the people of Myanmar are a gentle and tolerant people.

Hence, basic human rights are guaranteed not only by law but also as an essential pat of the Myanmar's custom, culture and tradition.

Myanmar has on many occasions expressed her views and policies on human rights, a few of which are reproduced below:-

- Myanmar holds the view that countries differ from each other due to differences in historical background, cultural traditions, religion and level of development. Culturally and in terms of perception, there exists a vast difference between the East and West. By this, we do not mean to infer that there exist no human rights principles applicable to all persons. However, divergences can be seen in approaches and implementation of human rights practices. At the same time, countries or groups of countries should avoid attempting to impose their views and values of human rights on the rest of the international community. There is no single political and economic model applicable to all countries.
- For developing countries like Myanmar, the most essential and fundamental basic right is to meet the food, clothing and shelter needs and to raise the standards of living of the people. Without ensuring this basic right, other aspects of human rights cannot be effectively implemented. Although some countries stress the importance of civil and political rights, developing nations like Myanmar believe that equal prominence should be accorded to economic, social and cultural rights. The right to development is especially important to developing countries.
- It is our belief that community rights should have equal importance, if not more, than individual rights. Moreover, in times of conflict between individual rights and national interest, there are situations that call for priority to be accorded to the interests of the nation. Each individual possesses not only rights but also duties and obligations to his country and to his society. It is a fact of life that over emphasis on individual rights can lead to disorder and unrest. Economic development and political stability are interdependent since economic development can be obtained only during times of political stability. Similarly, economic development contributes toward political stability.
- As the views, approaches, application and implementation of human rights differ from country to country because of the dissimilarities in historical experience, cultural traditions, religion and level of development, Myanmar believes that implementation of human rights in the national context should be the responsibility and competence of each government. Human rights should not be used as a pretext for interfering in matters that are essentially within the domestic jurisdiction of states. By this, it does not mean that human rights can be systematically violated behind the barrier of non-interference. What remains paramount is to promote human rights through international cooperation and consensus-building.
- Together with other developing and non-aligned countries, Myanmar believes that there should be strict observance of the principles of sovereignty, territorial integrity and non-interference in the internal affairs of other states. Myanmar is opposed to the misuse of human rights with political motives, to double standards

and selectivity, and means of applying pressure. Such tactics are detrimental and counterproductive to the advancement of human rights.

In the Union of Myanmar, "...there [is] total absence of discrimination based on religion. From the highest ranks of government service and throughout the ranks of public service, the question of religion simply [does] not arise ... The Myanmar society may in that respect be a model society." These words were not voiced by a Myanmar. They are comments submitted to the United Nations by Madame Sadako Ogata who visited Myanmar in 1990 as an independent expert. In Myanmar, there is complete freedom of worship, not only for Buddhism which is the religion of 90 per cent of the population but also for Christianity, Islam, Hinduism as well as animists. Freedom of worship is guaranteed in both the two previous constitutions of 1947 and 1974, and the State Law and Order Restoration Council, in keeping with this tradition, has promoted complete freedom of worship, and is also materially and financially supporting the various religions in the country as much as possible.

According to Myanmar customs and traditional culture, as well as under State constitutions adopted during consecutive eras, Myanmar women have always had equal rights with men. Existing laws of the country guarantee that all citizens, irrespective of race, religion, status, culture, place of birth or gender, are equal before the law.

Moreover, specific provisions are made in some of the laws in order to protect women and children, and the following four laws in particular ensure the protection of the rights of women in Myanmar:-

a) The Myanmar Buddhist Women's Special Marriage and Succession Act(1954);

b) The Suppression of Prostitution Act (1949);

c) The Myanmar Maternal and Child Welfare Association Law;

d) The Nursing and Maternity Law.

Provisions are also included in the Penal Code to protect women against rape, illicit intercourse, torture, causing miscarriage without one's consent, seduction and enticement.

There are also certain laws which have specific provisions for women labourers. There are provisions relating to the protection of modesty, prevention of hazards to life and accidents and the rights of women during confinement. Protection is given to all women prisoners.

Women in Myanmar are not only protected by such laws and provisions, they are also protected by Myanmar traditions and customs, as well as customary law, religious beliefs and practices. Women's rights constitute human rights and Myanmar women fully enjoy fundamental rights.

Myanmar people are well known for their culture, tolerance and compassion. In Myanmar society, men and women have a symbiotic relationship, mutually depending upon one another. They believe that they have equal and shared responsibilities towards the family and society. The men have a deep respect for women.

The All Myanmar Women's Affairs Committee has met with the officials of the Ministry concerned and members of the national NGOs dealing with women's affairs to review the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for Myanmar's eventual accession to the Convention.

The status of women in Myanmar is among the highest in the world.

An extract from the Statement made by the leader of the Myanmar Delegation to the Fourteenth Session of the Committee on the Rights of the Child produced below clearly shows the extent and the manner in which the Myanmar children are enjoying their basic rights:-

"... Myanmar became a State party of the United Nations Convention on the Rights of the Child on 15 August 1991. In order to implement the rights of the child recognized in that Convention the State promulgated the Child Law in July 1993. Subsequently, the Government formed the National Committee on the Rights of the Child so that the provisions of the law may be effectively implemented. Committees on the Rights of the Child are being formed: (14) Committees for the states and divisions; (56) at the district level; in accordance with Section (6) of the Child Law. Juvenile Courts have been conferred the powers of Juvenile Judges in areas where Juvenile courts have not been established. A programme of action was also adopted which the Departments of Health, Basic Education, and Social Welfare, are implementing with the close collaboration of UNICEF. Measures have also been taken to involve the whole community in the implementation of the Convention.

The culture of Myanmar clearly defines that parents undertake the primary responsibility for the wholesome development of the child within a family environment. Monks and teachers are considered as moral and ethical models. Society at large lends an enabling environment. There is no discrimination between sons and daughters, and both are equally referred to frequently as "precious jewels" and are highly valued as such.

Religion also plays a major role in our society. Myanmar people are deeply religious. Religion lays down that the five duties of parents include restraining the children from vice, exhorting the child to virtue, training the child for a profession, providing for a suitable marriage when the child comes of age, and handing over inheritance at the appropriate time. As such, the task of taking good care of one's children has always been a part of Myanmar tradition.

A Myanmar family is a cohesive unit based on mutual love and understanding together with the recognition of roles that exist for older and younger members of the family. Senior members guide their juniors, while being accorded love and respect by the younger ones, regardless of gender. This leads to a maintaining of a peaceful and tranquil atmosphere in the family. This also lays the ground for a sexual equality that begins from childhood.

The extended family pattern which is still predominant in Myanmar, ensures that children are protected and supervised. With such age-old traditions, customs and relationships, situations which can lead to the disintegration of or to violence in the family, arise but rarely. It also ensures that there is little incidence of street children since children can always find refuge in the extended families.

Another important aspect of life in Myanmar is the role of community plays in looking after the children. Neighbours keep a caring eye on each other's families and help keep delinquency in check. Parents in rural areas also commit their children to the care of monks at the monasteries, where they are taught not only to read and write but also moral values. But it is not only in rural areas where such an opportunity exists; monastic education has also been established in towns and cities for the children if their parents so wish.

Although Myanmar, in common with many countries, does face some problems in ensuring all rights for all children, we are convinced that due to the influence of our culture and traditions, the scope of the problem is not as immense as some other countries face. ...."

Allegations of Human Rights Violations

Mr. Lallah has included in his report allegations he has received of supposed human rights violations in Myanmar. There are allegations of torture, cruel, inhuman or degrading treatment, arbitrary arrest and detention, and forced labour. These cases remain as allegations and are unproven.

As Mr. Lallah has not yet had the occasion to visit Myanmar and assess the situation himself, he has incorporated into his report allegations which have been supplied to him by people opposing the Government, people with questionable political motives. The Special Rapporteur reported travelling to the Myanmar-Thai border on the Thai side with the aim of interviewing persons from Myanmar living in the camps in that area. It must be remembered that the few people who have reported these allegations are in actual fact, family members or sympathisers of armed groups fighting against the Government or actual members of the armed groups. Ordinary citizens leading their own lives along the border would have no reason to go and reside in camps set up by an armed group across the border. One has to take into consideration the

great majority of citizens belonging to the national races, who continue to live peacefully within the bounds of Myanmar territory.

It must also be stressed that whenever cases of civil or criminal offences are brought to the attention of the authorities, systematic enquiries are always conducted and necessary corrective measures taken. The courts regularly hear such cases which are brought before them. Punishment is meted out to those who are proved guilty of committing any crime, whether the person be a civilian or armed forces personnel.

In keeping with ongoing cooperation with the United Nations, the authorities have also responded to specific enquiries presented by Thematic Rapporteurs of the Commission on Human Rights with regard to alleged human rights violations. But when vague, sweeping and unsubstantiated allegations and accusations are inferred, it can only be concluded that such reports are mere allegations from prejudiced sources, having no basis of truth, allegations formulated to exert pressure by those groups bearing ill-will towards the country.

As examples to specific allegations contained in the inital report of Mr. Lallah, necessary enquiries were conducted, time and situation permitting. They reveal that alleged cases on investigation proved untrue.

(1) Under paragraph (A) of chapter IV, it is alleged that on 18-10-95, five "Rohingya" youths were arrested and executed for having links with the insurgents by a Section of MI18 of Buthidaung Township.

The truth is that five youths were neither arrested nor executed as alleged. To verify whether the letter alleging that one Abar Ahmed had contact with insurgents, the authorities questioned Yasin, Ado, Hafid Amidullah, Abar Ahmed and Farzuland during the period of 18 to 30 October 1995. During the interrogation no one was ill-treated.

(2) Under Paragraph (A) of Chapter IV, it is alleged that beginning of May 1996, villagers in the Chaing Tong were told to move, on pain of being shot. Five villagers from Kung Sar village were allegedly shot by Battalion 99.

Investigation on ground and situation reports reveal that in May 1996 there were neither forced locations nor shooting of civilians in the area indicated.. It is impossible to investigate the alleged incident at Kung Sar village as the location of that village was not clearly defined in the allegation.

(3) Under Paragraph (B) of Chapter IV, it was mentioned that a 20 year-old from Bawgali village, Than Daung township, Kayin State was reportedly forced to join Infantry Battalion No. 48 in June 1995 as a porter and later died due to injuries received by stepping on a land mine.

After making enquiries, it was found that No. 48 Infantry Battalion did not conduct any military operations in that area during that period.

(4) Under Paragraph (D) of Chapter IV, it was mentioned that Daw Maing, Ma Yin Tin Swe and U Myint Thein were also reportedly arrested on 12 January 1996.

Inquiries revealed that these individuals were neither detained nor was there any legal action taken against them.

(5) Under Paragraph (E) of Chapter IV, it was mentioned that a person named U Htwe who is currently detained in Insein Jail is said to be suffering severely from malaria and is not receiving adequate treatment.

Inquiries have been made in this regard and no person by the name of U Htwe is currently serving sentence in that Prison.

(6) Under Paragraph (E) of Chapter IV, Mr. Lallah detailed allegations with reference to prison labour. For instance it is alleged that 108 out of 530 inmates died from starvation, sickness and hard work during one year in Boke Pyin Prison Labour camp. About 500 prisoners are also said to be kept at the 30-mile labour camp where they break rocks into pieces for the construction of the railway in Yebyu township.

Inquiries have been made into these alleged incidents. Boke Pyin labour camp was opened on 12 August 1996 with 150 inmates. The camp is responsible for the construction of the Boke-pyin/ Lenya motor road. It has been revealed that 4 inmates and not 108 died of malaria. They were given medical treatment at the Boke Pyin Township hospital but they failed to recover. In accordance with the rules and regulations the families of the deceased were given the benefits they are entitled to.

There is no prison labour camp in Yebyu township. The 30-mile Labour camp was opened on 8 October 1994 with 1250 inmates, to take part in the construction of the Ye-Dawai railroad. The inmates contributing labour at the camp are not subjected to harsh prison conditions as alleged. They are treated well and live according to the systematic routine laid down by the prison authorities. Their routine consists of a wake-up call at 5:30 am, breakfast at 6:30 am, work between 7 am to 11 am, lunch and a rest between 11 am and 1 pm, work again until 4 pm, dinner at 5 pm, prayer time at 6 pm and lights-out at 9 pm. They have an adequate balanced diet and medical care is provided.

Allegations regarding the denial of freedom of expression and restrictions on association of a political nature are also mentioned in Mr. Lallah's report.

In this regard, we would like to reiterate that the Government of the Union of Myanmar, with the cooperation of the people, is laying the ground for a true democracy to develop in the country. Building a peaceful, prosperous and a modern democratic State is the national goal of Myanmar. Stability, peace and tranquillity and prevalence of law and order are vital in the process of nation building.

These essential conditions have been restored in Myanmar over the past few years through the sustained efforts of the Government and the people. Assembly and association of peaceful nature have never been restricted. Action is taken only against those who transgress existing laws of the land.

It must be understood that disruptions of peace and stability will not be permitted under any circumstances. The people have learned from the painful experiences of the 1988 anarchic events. Such disruptions only hinder the course on which the Government is set in order to bring true democracy to the country. Thus the Government will act in accordance with the law whenever situations arise with the potential for disturbing peace and stability.

A prime example is the regular talks held on weekends by the roadside by the NLD leadership. The Government tolerated them in spite of the inconvenience they caused in the neighbourhood until they became inflammatory. At that point the authorities concerned sent an intimation to the NLD to discontinue holding their talks by the roadside and that discussions, if necessary, should be held in the compound of the NLD headquarters. However, the NLD leadership defied the authorities and the talks continued, becoming more and more inflammatory, slandering the Government and the Tatmadaw. In May 1996, the NLD took the further step of attempting to hold a mass assembly, with the aim of drawing a parallel State Constitution. Since these acts of the NLD were tantamount to undermining the peace and stability of the State, it has become necessary to prevent the obstuction, disturbance and opposition to the peaceful and systematic transfer of responsibility of the State, successful performance of the functions of the National Convention and building of a peaceful and modern developed State. The State Law and Order Restoration Council was subsequently compelled to enact Law No. 5/96 concerning the protection of the peaceful and systematic transfer of State responsibility and the performance of the function of the National Convention against disturbances.

In another instance, in spite of prior permission from the authorities being needed for political parties to hold large gatherings, the NLD ignored the existing administrative directives and planned to hold a so-called "All Burma Party Congress" on 27-29 September 1996. This event was planned to coincide with major international events, such as the 51st Session of the UNGA and the consideration of the Cohen Amendment on Myanmar at the United States Congress. This was a synchronised political plan to put pressure on the Government on both the domestic and international fronts.

Since May 1996, the NLD had been making moves with the objective of disrupting the stability achieved in the country. To prevent anarchic conditions of 1988 from reappearing, the Government was compelled to call in some individuals connected with the above Congress for questioning. No one was arrested.

Some NLD party members were also involved, together with other political activists, in the student demonstrations in December 1996. The immediate cause of the student demonstrations was dissatisfaction at the manner in which the Yangon City Development Committee police had acted to contain a quarrel that erupted between three students and some civilians in a tea shop in October. The students, making certain demands within their own campuses, were soon infiltrated by outsiders with definite political motives. Once the students got out onto the streets, they were immediately joined by unscrupulous persons under different guises. NLD members were to be found among them.

The authorities however handled the situation with tact and leniency. There was not a single incident leading to bloodshed.

During the student demonstrations, anti-government underground elements of the illegal Burma Communist Party (BCP) were discovered actively trying to stir up and foment trouble. To prevent untoward incidents happening in the volatile situation, the authorities requested Daw Aung San Suu Kyi not to leave her compound for the time being. Nevertheless, officials responsible for her security made arrangements to enable her to attend and fulfil her social obligations. Likewise, necessary arrangements were made for responsible NLD party members to have access to her residence for meetings and the smooth conduct of party affairs.

The Government allowed the NLD to hold an Independence Day gathering in January. In spite of the NLD ignoring, once more, the existing directives to apply for prior permission, they went ahead and held Union Day Celebrations in the compound of Daw Aung San Suu Kyi's residence in February. The authorities, with tolerance, allowed the to take place. Only when an uninvited and unruly throng tried to join in did the authorities take steps to prohibit them from entering the compound for security reasons.

G. COOPERATION WITH THE UN

Myanmar became a member of the United Nations in April 1948, three months after regaining her independence. As a responsible member of the World Organisation, Myanmar wholeheartedly supports and strictly adheres to the principles enshrined in the United Nations Charter. Myanmar has actively participated in the activities of the United Nations and she will continue to do so.

The Vice-chairman of the State Law and Order Restoration Council reiterated Myanmar's dedication and commitment to the principles and purposes of the Charter and pledged Myanmar's continued co-operation with the United Nations in his address to the 50th Anniversary Special Commemorative Session of the United Nations General Assembly.

Myanmar participated in the drafting of the 1948 Universal Declaration of Human Rights. Moreover, Myanmar has signed or acceded to various International Agreements and Conventions, including the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Slavery Convention of 1926, the Forced labour Convention, 1930 (No. 29), Freedom of Association and Protection of the Right to Organise, 1948 (No.87), Convention on the Political Rights of Women, the 1949 Four Geneva Conventions, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Convention on the Rights of the Child, the Convention on Climate Change and Biodiversity Convention, the Treaty on Non-Proliferation of Nuclear Weapons (NPT), the Chemical Weapons Convention (CWC), Comprehensive Test Ban Treaty (CTBT), and the Safeguard Agreement (IAEA).

In addition to those international conventions, the State Law and Order Restoration Council has enacted numerous domestic legislation relating to human rights.

In response to the United Nations General Assembly Resolutions, and with the objective of discussing issues of mutual interest, the Government of Myanmar has been conducting a dialogue with the United Nations since 1994. During the 49th Session of UNGA, the Minister for Foreign Affairs of the Union of Myanmar U Ohn Gyaw had a meeting with Dr. Boutros Boutros Ghali, the then Secretary General of the United Nations and several rounds of discussions with Mr. Marrack Goulding, Under-Secretary General for Political Affairs of the United Nations.

Subsequently, Under-Secretary General Mr. Raffeeudin Ahmed, Representative of the United Nations Secretary-General and Mr. Alvaro de Soto, Assistant Secretary-General for Political Affairs of the United Nations visited Myanmar in 1994 and 1995 respectively and held discussions with the Myanmar authorities on matters of mutual interest. The Vice-Chairman of the State Law and Order Restoraton Council also met with Mr. Alvaro de Soto on 23 October, 1995 in New York.

Further rounds of talks between Mr. Alvaro de Soto and U Ohn Gyaw were held at the United Nations Headquarters in New York on 10 October 1996. In June 1996, U Ohn Gyaw also had discussions with Mr. Francesc Vendrall, Director of East Asia and the Pacific, in Bangkok, Thailand.

Recently, in February 1997, Mr. Francesc Vendrall visited Myanmar and rounds of talks were held between him and the Myanmar authorities.

The Government of the Union of Myanmar will continue to co-operate with the United Nations to the fullest extent possible.

H. CONCLUSION

In spite of the many positive changes that have taken place, and are continuing to take place in Myanmar, very little recognition has been given to positive aspects. Instead, negative aspects are seized on and magnified, and credence is given to allegations rather than to concrete evidence. It is hoped that the foregoing will help to persuade the Commission that the situation in Myanmar should be viewed in its entirety rather than through any perceived negative aspects. Every country is a complex mix of conditions, all interrelated with one another. It would be counterproductive to focus on ill-conceived grievances and assume that they reflect the reality as a whole.

The Government of the Union of Myanmar believes that there exists no valid ground for introducing a formal resolution on the human rights situation in Myanmar at this year's session of the Commission, and that it warrants a deferral of the consideration of any draft resolution on Myanmar, or a downgrading of the procedure on this question by the Commission.

With the cooperation on the part of the Myanmar Government, and with the positive progress and efforts it has made as outlined in the foregoing, it is hoped that the Commission will reciprocate by taking a balanced view on the consideration of this question, and by not pursuing any course of action that may hamper the ongoing constructive cooperation between Myanmar and the United Nations. Should a draft resolution be introduced at the current session of the Commission, the foregoing considerations require that such a draft resolution fully and accurately reflect the positive developments taking place in the Union of Myanmar.

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